

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In re	)	
Minority Television Project, Inc.	)	CSR-8946-M
License of Noncommercial Television Station	)	MB Docket No. 17-313
KMTP, Channel *32	)	
For Carriage of KMTP(TV), San Francisco,	)	
California	)	

To: Chief, Media Bureau

**REPLY OF MINORITY TELEVISION PROJECT, INC. TO OPPOSITION  
OF DISH NETWORK, L.L.C. TO PETITION FOR RECONSIDERATION**

**INTRODUCTION**

Minority Television Project, Inc. ("MTP"), licensee of noncommercial television station KMTP-TV, Channel \*32, San Francisco, California ("MTP"), by its attorneys, respectfully files its Reply to the Opposition of Dish Network, L.L.C. to Petition for Reconsideration the "DISH Opposition"), stating as follows:

In its Petition for Reconsideration, MTP made several arguments in support of the Petition, none of which the DISH Reply refutes. In the balance of this Reply, MTP will demonstrate that the DISH Reply does not provide a basis for denial of the Petition.

**I. DISH admits that the Notice from MTP was sent by Priority Express Mail, Return Receipt Requested, and that DISH received the Notice**

In, the Petition for Reconsideration, MTP pointed out that the Decision was premised on the assumption that there was a question as to whether the Notice was sent by Priority Mail, Return Receipt Requested. Decision at 3 n. 16. Hence, the Decision was based upon a serious mistake of fact, which was that MTP hadn't shown that the Notice was sent Priority Mail,

Return Receipt Requested. In addition, DISH admits that it received the Notice. Petition at 4-7.

The DISH Opposition simply fails to address the point made in the Petition for Reconsideration. Instead, the Opposition concedes that “. . . no party disputes that KMTP chose to use Priority Express Mail, not certified mail, return receipt requested.” Opposition at 2. Then, simply ignoring the clear language in the Decision indicating that it was premised on the conclusion that MTP had not proven that the Notice was sent by Priority Mail, Return Receipt Requested, DISH shifts gears and contends that “The dispute is not about whether KMTP’s chosen mailing method worked this time.” Opposition at 3.

The bottom line is that, since the Decision operated under the false premise that it had not been conclusively established in the record that the notice has been sent by Priority Express Mail, Return Receipt Requested, this alone requires that the Decision be reconsidered.

**II. DISH incorrectly argues that the Bureau Decision “correctly followed precedent” while ignoring the inconvenient truth that the authority cited by the Decision is not binding precedent and does not address a situation such as the present one where actual notice was given and received**

The Petition for Reconsideration demonstrated that the Decision erred when it relied on the conclusion that “Section 76.66(d)(1)(ii) provides one specific mailing method for carriage elections: certified mail, return receipt requested. The provision does not indicate that this is a suggested method, or a preferred method, and we therefore need not decide whether priority express mail is an equivalent or better service, as KMTP suggests.” Decision at Paragraph 6. The Petition demonstrated that, in fact, at the time that Section 76.66(d)(1)(ii) was adopted, the Commission clearly stated that it believed that “. . . certified mail, return receipt requested **is the preferred method** to ensure that broadcast stations are able to demonstrate that they submitted their elections by the required deadline, and that they were received by the satellite carrier.”

*Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Order on Reconsideration, 16 FCC Rcd 16544, 16576, para 65 (2001) (emphasis added). Petition at 7 to 8.

The Petition for Reconsideration also demonstrated that, in addition to repeated statements by the Commission that “certified mail, return receipt requested is the preferred method,” the Decision erroneously adopted the interpretation of 76.66(d)(1)(ii) set forth in an earlier decision of the Cable Services Bureau in *Family Stations, Inc. v. DirecTV* (“*Family Stations*”), 17 FCC Rcd 2365, 2370, para. 11 (2002), *aff’d* 19 FCC Rcd 14777 (2004) (footnotes omitted). The Petition demonstrated that the *Family Stations, Inc.* decision has no precedential value because anything stated in the decision with respect to whether the sending of notice via certified mail, return receipt requested was mandatory and whether the failure to do so was fatal, regardless of whether notice was sent and received is dicta and of no precedential value. *NTECH v. FCC*, 841 F.3d 497, 504 (D.C. Cir. 2016). Petition at 8-9.

The Dish Opposition, while arguing that the “Bureau correctly followed precedent” (Opposition at 3) fails to identify exactly what “precedent” it is referring to and does not dispute MTP’s contention that the *Family Stations* decision is of no precedential value in the instant case. Instead, Dish ignores the Decision’s own distinction between a mandatory method of notice and a “suggested method, or a preferred method. . . .” Decision at paragraph 6. Instead, DISH argues, contrary to paragraph 6 of the Decision and logic, that “preferred” really means “mandatory.” DISH Opposition at 3-4.



### **III. DISH incorrectly argues that the Bureau Decision “Correctly applied the regulations in force at the time it rendered its ruling”**

MTP’s Petition for Reconsideration argued that:

The Decision also is in error because it did not take into account the NPRM’s statements and actions with respect to Commission’s statements and action regarding notice and Section 76.66(d)(1)(ii) and that Section 76.66(d)(1)(ii) is in need of updating to reflect that reality. The NPRM clearly has made it clear that notice via certified mail, return receipt requested is the preferred means of notice. The NPRM also makes it clear that the Commission has concluded that the means of communication at present are vastly different than they were in 2001. The failure of the Decision to even consider the import of the NPRM is hard to fathom, as the NPRM was released more than a month before the Decision was released and is clearly germane to the issue at hand: whether notice actually given and received is adequate even it was not provided by certified mail, return receipt requested. Indeed, such a failure is reversible error.

Petition at 9. The Petition also demonstrated that the purpose of certified mail, return receipt requested was so a broadcaster could prove timely delivery. Petition at 10. DISH does not contend that it did not receive timely delivery of the carriage election notice.

The DISH Opposition ignores all of this and makes the bald and circular argument that the Bureau should ignore the NPRM because certified mail, return receipt requested is a “mandatory requirement” until such time as the Commission changes the rule. DISH Opposition at 4. In other words, since DISH argues that, even though it admits that it received a timely carriage election notice from MTP via Priority Express Mail, return receipt requested, the Bureau should elevate form over reality and accept DISH’s contention that sending the notice via certified mail, return receipt requested is mandatory. DISH’s position defies logic and should be rejected.

**IV. DISH, while admitting that it received MTP's carriage election notice, argues that somehow it and other satellite carriers would be prejudiced by a decision in MTP's favor and that such a decision would not be in the public interest**

In its Petition for Reconsideration, MTP stated:

DISH does not contend that it was prejudiced in any way by receiving MTP's notice via Priority Express Mail, Return Requested, rather than Certified Mail, Return Receipt Requested. It does not so contend for the simple reason that it has not been prejudiced. Given that DISH had actual notice and is not prejudiced, there is no public interest purpose served by ignoring the Commission's repeated statements that it believed in 2001 that certified mail, return receipt requested was "...the preferred method to ensure that broadcast stations were able to demonstrate that they submitted their elections by the required deadline, and that they were received by the satellite carrier."

Petition at 10-11.

DISH claims that MTP has made an "unsupported assertion" that DISH has not been prejudiced by its receipt of actual notice via Priority Express Mail. DISH Opposition at 3. However, nowhere in its Opposition does DISH attempt to describe what this prejudice might be. So, the prejudice DISH has suffered is a mystery. The best DISH can come up with is the vague claim that, if MTP is granted the requested relief, "... it would leave DISH and all other video providers subject to mandatory carriage in confusion over the relevant legal requirements." DISH Opposition at 5.

This "confusion" claim is absurd on its face. A decision in MTP's favor would not create any confusion. If a video provider subject to mandatory carriage admits it has actually received a timely carriage election notice, the provider accepts the notice and provides carriage. If the video provider asserts that it did not receive a timely carriage notice, the general legal principle as stated in *Family Stations* would apply: where delivery of timely notice is at issue, the party asserting that timely notice was been given would have the burden of proving so.

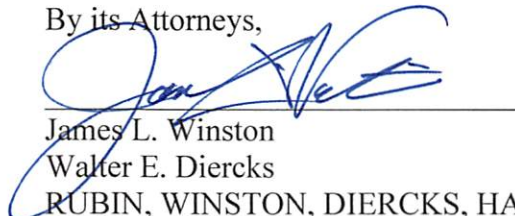
MTP also argued that the application of a “bright line” standard did not serve the public interest because it would deprive for three years DISH subscribers in the San Francisco area of KMTP’s unique programming, serving primarily Asian language residents in the service area. Petition for Reconsideration at 11. DISH does not even attempt to dispute this.

**V. Conclusion**

For all the foregoing reasons and for all the reasons set forth in its initial Petition for Reconsideration, Minority Television Project respectfully requests reconsideration of the Decision denying its complaint for carriage and for an order requiring DISH to begin carriage of KMTP.

**MINORITY TELEVISION PROJECT, INC.**

By its Attorneys,

A handwritten signature in blue ink, appearing to read "James L. Winston", is written over a horizontal line.

James L. Winston

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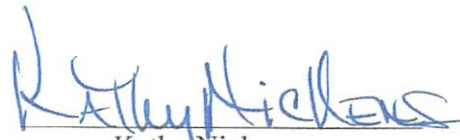
February 20, 1018

**CERTIFICATE OF SERVICE**

I, Kathy Nickens, do hereby certify that on February 20, 2018, a true copy of the foregoing "Reply to DISH Opposition" was mailed, first class U.S. mail, postage pre-paid to the following:

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